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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,395	02/25/2002	Claude Andre	408.106A	6873

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EXAMINER

WARE, DEBORAH K

ART UNIT

PAPER NUMBER

1651

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/084,395

Applicant(s)

ANDRE ET AL.

Examiner

Deborah K. Ware

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claims 1-15 and 20 are presented for reconsideration on the merits.

Claims 16-19 have been canceled.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Information Disclosure Statement

The information disclosure statement (IDS) filed October 29, 2004 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because the first office action was mailed on June 29, 2004, which is before the filing date of the IDS. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609 ¶ C(1). However, examiner did note some references which she believes is prior art against the newly amended claims and will cite it on a PTO-892 Form.

AMENDMENT

The amendment filed September 28, 2004, has been received and entered of record.

Claim Rejections - 35 USC § 112

Claims 1-15 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is rendered vague and indefinite for "group consisting of" at line 2 which appears incomplete and may be a typo or error in the amendment. At any rate the phrase makes the claim indefinite and incoherent or difficult to read. The claims remain indefinite for the recitation of "free from human or animal elements". Also the term "comprising effective amounts" in claim 1 at line 5 renders the claims unclear because it is uncertain what effective amounts are being described. Effective amounts of what? Furthermore, the term "or in lyophilized form" is unclear as to what exactly is in lyophilised form? Is it the amino acids or what?

Also claim 6 is rendered vague and indefinite for "or the equivalents thereof" because it is uncertain what this means. The metes and bounds of the claim can not be determined.

Claim 10 lacks antecedent basis for the recitation of "the respective proportions" and for "the quantitative proportions".

In addition, claim 11 is rendered vague for the recitation of "conventional elements of nutria media" since this phrase does not clearly and distinctly define the claimed invention.

Response to Arguments

Applicant's arguments filed September 28, 2004, have been fully considered but they are not persuasive. The argument that one of skill in the art would know what the term means in the claims is noted, however, the phrase used in the claims has a much broader meaning than contamination and if it is protein derived from an animal or human, viruses or bacterial contamination which is intended then if Applicants have support in their specification for this definition of "free from human or animal elements" it is suggested that they insert this language instead. Furthermore, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., contaminants such as viruses, bacteria, protein) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Thus, this specific rejection of record is maintained.

Claim Rejections - 35 USC § 102/103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor

and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 4-5 and 11 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over newly cited Rodriguez et al., see the PTO-892 Form.

Claims are drawn to a medium for cultivating a producing mites comprising amino acids in lyophilized form.

Rodriguez et al teach a medium for cultivating a producing mites comprising amino acids in lyophilized form. See the abstract and page 979, last 8 lines and page 981, lines 4-6. Also note Table 2, page 983.

The claims are identical to the disclosed subject matter and are therefore considered to be anticipated by the teachings therein.

However, in the alternative that there is some unidentified claim characteristic for which provides for some difference between the claims and cited disclosure then such difference is considered to be so slight as to render the claims obvious. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to provide for a medium comprising lyophilized amino acids for which to culture mites. The claims would have been obvious in the absence of some unexpected successful results. Therefore, the claims are rendered obvious in the alternative over this cited reference.

Claims 2-3, 6-10, 12-15 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez et al, cited above, in view of newly cited Singh, Yi et al and Miyamoto et al, all cited of record on enclosed PTO-892 Form.

Claims are further drawn to grinding amino acids in proportional amounts of at least 50%, reproducing a spectrum of amino acids that make up keratin or the stratum corneum, shrimp eggs or soya. Further, the medium comprises yeast, calcium chloride, magnesium sulphate, sodium hydroxide, potassium chloride and potassium hydroxide. Further, the mites can be selected from *Dermatophagoids pteronyssinus* and *Blomia tropicalis*.

Rodriguez et al is discussed above.

Singh teaches salts such as calcium chloride, magnesium sulphate, sodium hydroxide, potassium chloride and potassium hydroxide, and further teaches the presence of vitamins and biotin, see page 483, lines 11-20.

Yi et al and Miyamoto et al clearly teach *Dermatophagoids pteronyssinus* and *Blomia tropicalis*. See pages 133, line 2 and 189, line 1 respectively.

The claims differ from Rodriguez et al in that specific salts are not disclosed and neither are the specific species of mites.

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to cultivate mites on a medium containing amino acids, lyophilized amino acids in the amounts set forth by Rodriguez et al and further to include the salts as disclosed by Singh to cultivate the mites as disclosed by Chew et al and Miyamoto et al. Clearly one of skill in the art would have been motivated to select for these amounts and amino acids, salts, mites

because the prior art teaches successful results have been obtained. Therefore, in the absence of persuasive evidence to the contrary and absence of unexpected successful results the claims are deemed prima facie obvious over the cited prior art.

All claims fail to be patentably distinguishable over the state of the art discussed above and cited on the enclosed PTO-892 and/or PTO-1449. Therefore, the claims are properly rejected.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is 571-272-0924. The examiner can normally be reached on 9:30-6:00.

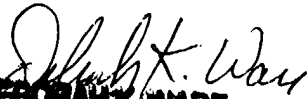
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 10/084,395

Page 9

Art Unit: 1651


DEBORAH K. WARE
PATENT EXAMINER

Deborah K. Ware
December 11, 2004